

ASSEMBLY, No. 3241

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblyman ERIK PETERSON

District 23 (Hunterdon, Somerset and Warren)

SYNOPSIS

Clarifies that electronic public records do not have to be converted to different electronic formats under the State's open public records law.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning access to public records in electronic formats
2 and amending P.L.2001, c.404.

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4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

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7 1. Section 6 of P.L.2001, c.404 (C.47:1A-5) is amended to read
8 as follows:

9 6. a. The custodian of a government record shall permit the
10 record to be inspected, examined, and copied by any person during
11 regular business hours; or in the case of a municipality having a
12 population of 5,000 or fewer according to the most recent federal
13 decennial census, a board of education having a total district
14 enrollment of 500 or fewer, or a public authority having less than
15 \$10 million in assets, during not less than six regular business hours
16 over not less than three business days per week or the entity's
17 regularly-scheduled business hours, whichever is less; unless a
18 government record is exempt from public access by: P.L.1963, c.73
19 (C.47:1A-1 et seq.) as amended and supplemented; any other
20 statute; resolution of either or both houses of the Legislature;
21 regulation promulgated under the authority of any statute or
22 Executive Order of the Governor; Executive Order of the Governor;
23 Rules of Court; any federal law; federal regulation; or federal order.
24 Prior to allowing access to any government record, the custodian
25 thereof shall redact from that record any information which
26 discloses the social security number, credit card number, unlisted
27 telephone number, or driver license number of any person; except
28 for use by any government agency, including any court or law
29 enforcement agency, in carrying out its functions, or any private
30 person or entity acting on behalf thereof, or any private person or
31 entity seeking to enforce payment of court-ordered child support;
32 except with respect to the disclosure of driver information by the
33 New Jersey Motor Vehicle Commission as permitted by section 2 of
34 P.L.1997, c.188 (C.39:2-3.4); and except that a social security
35 number contained in a record required by law to be made,
36 maintained or kept on file by a public agency shall be disclosed
37 when access to the document or disclosure of that information is not
38 otherwise prohibited by State or federal law, regulation or order or
39 by State statute, resolution of either or both houses of the
40 Legislature, Executive Order of the Governor, rule of court or
41 regulation promulgated under the authority of any statute or
42 executive order of the Governor. Except where an agency can
43 demonstrate an emergent need, a regulation that limits access to
44 government records shall not be retroactive in effect or applied to
45 deny a request for access to a government record that is pending

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 before the agency, the council or a court at the time of the adoption
2 of the regulation.

3 b. (1) A copy or copies of a government record may be
4 purchased by any person upon payment of the fee prescribed by law
5 or regulation. Except as otherwise provided by law or regulation
6 and except as provided in paragraph (2) of this subsection, the fee
7 assessed for the duplication of a government record embodied in the
8 form of printed matter shall be \$0.05 per letter size page or smaller,
9 and \$0.07 per legal size page or larger. If a public agency can
10 demonstrate that its actual costs for duplication of a government
11 record exceed the foregoing rates, the public agency shall be
12 permitted to charge the actual cost of duplicating the record. The
13 actual cost of duplicating the record, upon which all copy fees are
14 based, shall be the cost of materials and supplies used to make a
15 copy of the record, but shall not include the cost of labor or other
16 overhead expenses associated with making the copy except as
17 provided for in subsection c. of this section. Access to electronic
18 records and non-printed materials shall be provided free of charge,
19 but the public agency may charge for the actual costs of any needed
20 supplies such as computer discs.

21 (2) No fee shall be charged to a victim of a crime for a copy or
22 copies of a record to which the crime victim is entitled to access, as
23 provided in section 1 of P.L.1995, c.23 (C.47:1A-1.1).

24 c. Whenever the nature, format, manner of collation, or volume
25 of a government record embodied in the form of printed matter to
26 be inspected, examined, or copied pursuant to this section is such
27 that the record cannot be reproduced by ordinary document copying
28 equipment in ordinary business size or involves an extraordinary
29 expenditure of time and effort to accommodate the request, the
30 public agency may charge, in addition to the actual cost of
31 duplicating the record, a special service charge that shall be
32 reasonable and shall be based upon the actual direct cost of
33 providing the copy or copies; provided, however, that in the case of
34 a municipality, rates for the duplication of particular records when
35 the actual cost of copying exceeds the foregoing rates shall be
36 established in advance by ordinance. The requestor shall have the
37 opportunity to review and object to the charge prior to it being
38 incurred.

39 d. A custodian shall permit access to a government record and
40 provide a copy thereof in the medium or electronic format requested
41 if the public agency maintains the record in that medium or format.
42 If the public agency does not maintain the record in the medium
43 requested, the custodian shall either convert the record to the
44 medium requested or provide a copy in some other meaningful
45 medium. If the public agency does not maintain the record in the
46 electronic format requested, the custodian may either convert the
47 record to the electronic format requested or provide a copy in the
48 electronic format maintained by the public agency. If a request is

1 for a record **[: (1)]** in a medium or electronic format: (1) not
2 routinely used by the agency; (2) not routinely developed or
3 maintained by an agency; or (3) requiring a substantial amount of
4 manipulation or programming of information technology, the
5 agency may charge, in addition to the actual cost of duplication, a
6 special charge that shall be reasonable and shall be based on the
7 cost for any extensive use of information technology, or for the
8 labor cost of personnel providing the service, that is actually
9 incurred by the agency or attributable to the agency for the
10 programming, clerical, and supervisory assistance required, or both.

11 e. Immediate access ordinarily shall be granted to budgets,
12 bills, vouchers, contracts, including collective negotiations
13 agreements and individual employment contracts, and public
14 employee salary and overtime information.

15 f. The custodian of a public agency shall adopt a form for the
16 use of any person who requests access to a government record held
17 or controlled by the public agency. The form shall provide space
18 for the name, address, and phone number of the requestor and a
19 brief description of the government record sought. The form shall
20 include space for the custodian to indicate which record will be
21 made available, when the record will be available, and the fees to be
22 charged. The form shall also include the following: (1) specific
23 directions and procedures for requesting a record; (2) a statement as
24 to whether prepayment of fees or a deposit is required; (3) the time
25 period within which the public agency is required by P.L.1963, c.73
26 (C.47:1A-1 et seq.) as amended and supplemented, to make the
27 record available; (4) a statement of the requestor's right to challenge
28 a decision by the public agency to deny access and the procedure
29 for filing an appeal; (5) space for the custodian to list reasons if a
30 request is denied in whole or in part; (6) space for the requestor to
31 sign and date the form; (7) space for the custodian to sign and date
32 the form if the request is fulfilled or denied. The custodian may
33 require a deposit against costs for reproducing documents sought
34 through an anonymous request whenever the custodian anticipates
35 that the information thus requested will cost in excess of \$5 to
36 reproduce.

37 g. A request for access to a government record shall be in
38 writing and hand-delivered, mailed, transmitted electronically, or
39 otherwise conveyed to the appropriate custodian. A custodian shall
40 promptly comply with a request to inspect, examine, copy, or
41 provide a copy of a government record. If the custodian is unable
42 to comply with a request for access, the custodian shall indicate the
43 specific basis therefor on the request form and promptly return it to
44 the requestor. The custodian shall sign and date the form and
45 provide the requestor with a copy thereof. If the custodian of a
46 government record asserts that part of a particular record is exempt
47 from public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.)
48 as amended and supplemented, the custodian shall delete or excise

1 from a copy of the record that portion which the custodian asserts is
2 exempt from access and shall promptly permit access to the
3 remainder of the record. If the government record requested is
4 temporarily unavailable because it is in use or in storage, the
5 custodian shall so advise the requestor and shall make arrangements
6 to promptly make available a copy of the record. If a request for
7 access to a government record would substantially disrupt agency
8 operations, the custodian may deny access to the record after
9 attempting to reach a reasonable solution with the requestor that
10 accommodates the interests of the requestor and the agency.

11 h. Any officer or employee of a public agency who receives a
12 request for access to a government record shall forward the request
13 to the custodian of the record or direct the requestor to the
14 custodian of the record.

15 i. Unless a shorter time period is otherwise provided by
16 statute, regulation, or executive order, a custodian of a government
17 record shall grant access to a government record or deny a request
18 for access to a government record as soon as possible, but not later
19 than seven business days after receiving the request, provided that
20 the record is currently available and not in storage or archived. In
21 the event a custodian fails to respond within seven business days
22 after receiving a request, the failure to respond shall be deemed a
23 denial of the request, unless the requestor has elected not to provide
24 a name, address or telephone number, or other means of contacting
25 the requestor. If the requestor has elected not to provide a name,
26 address, or telephone number, or other means of contacting the
27 requestor, the custodian shall not be required to respond until the
28 requestor reappears before the custodian seeking a response to the
29 original request. If the government record is in storage or archived,
30 the requestor shall be so advised within seven business days after
31 the custodian receives the request. The requestor shall be advised
32 by the custodian when the record can be made available. If the
33 record is not made available by that time, access shall be deemed
34 denied.

35 j. A custodian shall post prominently in public view in the part
36 or parts of the office or offices of the custodian that are open to or
37 frequented by the public a statement that sets forth in clear, concise
38 and specific terms the right to appeal a denial of, or failure to
39 provide, access to a government record by any person for
40 inspection, examination, or copying or for purchase of copies
41 thereof and the procedure by which an appeal may be filed.

42 k. The files maintained by the Office of the Public Defender
43 that relate to the handling of any case shall be considered
44 confidential and shall not be open to inspection by any person
45 unless authorized by law, court order, or the State Public Defender.
46 (cf: P.L.2014, c.19, s.3)

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48 2. This act shall take effect immediately.

STATEMENT

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3 This bill would clarify that a public agency does not have to
4 convert a public record to a particular electronic format under the
5 State’s open public records law, commonly referred to as the “Open
6 Public Records Act,” P.L.1963, c.73 (C.47:1A-1 et seq.). Current
7 law does not expressly address requests for public records in
8 particular electronic formats. This bill would provide that a public
9 agency must provide the record in the electronic format requested
10 only if the agency maintains the record in that format. Otherwise,
11 the public agency, in its discretion, may either convert the record to
12 the electronic format requested or provide a copy in the electronic
13 format maintained by the public agency. If the public agency elects
14 to convert a record to the electronic format requested, the agency
15 may charge a special charge for the reasonable conversion costs in
16 those circumstances in which a special charge may be charged for
17 converting a record to the medium requested provided for under
18 current law. This bill would simplify the process for responding to
19 requests for electronic public records so that records custodians
20 may focus their efforts on the timely provision of public records,
21 and to help avoid potential litigation over such requests, which can
22 lead to substantial costs for a public agency.